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**Commercial Steel Corporation d/b/a Riverview Steel Corporation and United Steelworkers of America, Local 14693, AFL-CIO, CLC. Case 6-CA-32175**

July 30, 2002

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on July 10, 2001, the General Counsel issued the complaint on October 29, 2001, against Commercial Steel Corporation d/b/a Riverview Steel Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On January 28, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On February 1, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 30, 2001, notified the Respondent that unless an answer was received by the close of business on the third business day following receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

<sup>1</sup> Member Bartlett agrees that granting the Motion for Summary Judgment and finding 8(a)(5) violations are appropriate, inasmuch as the undisputed factual allegations establish that Respondent's refusal to

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Glassport, Pennsylvania, has been engaged in the manufacture and non-retail sale of steel rebar.

During the 12-month period ending June 30, 2001, the Respondent, in conducting its business operations, sold and shipped from its Glassport, Pennsylvania facility, goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance and janitorial employees employed by the Respondent at its Glassport, Pennsylvania facility; excluding all office, clerical, and confidential employees and guards, professional employees and supervisors as defined in the Act.

Since in or about 1991 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 1, 1999, to November 30, 2004. At all times since in or about 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about December 1, 1999, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, which agreement was to remain in effect until November 30, 2004.

Since on or about January 11, 2001, the Respondent failed to continue in effect all the terms and conditions of the agreement set forth above by:

- (a) failing to make required contributions to unit employee IRA accounts, in accordance with article 18 of the collective-bargaining agreement;

process grievances has prevented private dispute resolution of its several contract breaches.

(b) failing to remit to the Union, union dues deducted from the employees' paychecks in accordance with article 2, section 6 of the collective-bargaining agreement; and

(c) failing and refusing to respond to grievances filed by the Union over these and other alleged breaches of the collective-bargaining agreement in accordance with article 10 of the collective-bargaining agreement.

The Respondent engaged in the conduct described above without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

Since on or about the dates indicated, the Respondent engaged in the following conduct:

(1) In or about April 2001, the Respondent ceased remitting loan payments deducted from unit employees' paychecks to the Glassport Copperweld Credit Union.

(2) In or about June 2001, the Respondent ceased remitting to the uniform supplier payments for uniforms deducted from employees' paychecks.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent engaged to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make required contributions to unit employees' IRA accounts, by ceasing to remit loan payments deducted from unit employees' paychecks to the Glassport Copperweld Credit Union, and by ceasing to remit to the uniform supplier payments for uniforms de-

ducted from employees' paychecks, we shall order the Respondent to make whole its unit employees by making all such delinquent payments, including any additional amounts due in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>2</sup> Further, we shall order the Respondent to remit to the Union the union dues deducted from employees' wages as required by the 1999–2004 collective-bargaining agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.<sup>3</sup> We also shall order the Respondent to continue in effect all the terms and conditions of the 1999–2004 collective-bargaining agreement by responding to grievances filed pursuant to article 10 of the collective-bargaining agreement.

#### ORDER

The National Labor Relations Board orders that the Respondent, Commercial Steel Corporation d/b/a River-view Steel Corporation, Glassport, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to make required contributions to unit employees' IRA accounts.

(b) Failing to remit to the Union, the union dues deducted from the employees' paychecks.

(c) Failing and refusing to respond to grievances filed by the Union.

<sup>2</sup> To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

<sup>3</sup> In the complaint, the General Counsel seeks an order requiring the Respondent "to reimburse any unit employee entitled to a monetary award in this matter for any extra federal, state and/or local income taxes that would or may result from their receipt of a lump sum backpay distribution in one tax year that represents a backpay award for a multiyear period that would have encompassed several tax years." This aspect of the General Counsel's proposed Order would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1984), aff'd. 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811, fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order here.

(d) Failing to remit loan payments deducted from unit employees' paychecks to the Glassport Copperweld Credit Union.

(e) Failing to remit to the uniform supplier payments for uniforms deducted from employees' paychecks.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue to honor all the terms of the 1999–2004 agreement, and on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production, maintenance and janitorial employees employed by us at our Glassport, Pennsylvania facility; excluding all office, clerical, and confidential employees and guards, professional employees and supervisors as defined in the Act.

(b) Make required contributions to unit employees' IRA accounts.

(c) Remit to the Union, the union dues deducted from the employees' paychecks.

(d) Respond to grievances filed by the Union.

(e) Remit loan payments deducted from unit employees' paychecks to the Glassport Copperweld Credit Union.

(f) Remit to the uniform supplier payments for uniforms deducted from employees' paychecks.

(g) Make all unit employees and the Union whole, with interest as set forth in the remedy section of this decision, for any losses suffered as a result of the failure to make required contributions to unit employees' IRA accounts; to remit to the Union the union dues deducted from the employees' paychecks; to remit loan payments deducted from employee's paychecks to the Glassport Copperweld Credit Union; and to remit to the uniform supplier payments for uniforms deducted from employees' paychecks.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Glassport, Pennsylvania, copies of the attached notice marked "Appendix".<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 11, 2001.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2002

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Peter J. Hurtgen, Chairman

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Wilma B. Liebman, Member

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Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

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<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to make required contributions to unit employees' IRA accounts.

WE WILL NOT fail to remit to United Steelworkers of America, Local 14693, AFL-CIO, CLC, the union dues deducted from employees' paychecks.

WE WILL NOT fail and refuse to respond to grievances filed by the Union.

WE WILL NOT fail to remit loan payments deducted from unit employees' paychecks to the Glassport Copperweld Credit Union.

WE WILL NOT fail to remit to the uniform supplier payments for uniforms deducted from employees' paychecks.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union for the following unit employees and continue to honor all the terms of the 1999-2004 agreement:

All full-time and regular part-time production, maintenance and janitorial employees employed by us at our Glassport, Pennsylvania facility; excluding all office, clerical, and confidential employees and guards, pro-

fessional employees and supervisors as defined in the Act.

WE WILL make required contributions to unit employees' IRA accounts.

WE WILL remit to the Union, the union dues deducted from the employees' paychecks.

WE WILL, in a timely fashion, respond to grievances filed by the Union.

WE WILL remit loan payments deducted from unit employees' paychecks to the Glassport Copperweld Credit Union.

WE WILL remit to the uniform supplier payments for uniforms deducted from employees' paychecks.

WE WILL remit union dues as required by the 1999-2004 agreement and reimburse the Union for our failure to do so since about January 11, 2001, with interest.

WE WILL make all contractually required payments as set forth in the 1999-2004 agreement.

WE WILL make the unit employees whole for any losses suffered as a result of our failure to make required contributions to the unit employees' IRA accounts; to remit to the Union the union dues deducted from the employees' paychecks; to remit loan payments deducted from employees' paychecks to the Glassport Copperweld Credit Union; and to remit to the uniform supplier payments for uniforms deducted from employees' paychecks, with interest.

COMMERCIAL STEEL CORPORATION D/B/A  
RIVERVIEW STEEL CORPORATION